IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 22ND OCTOBER 2007 / 30TH ASWINA 1929

Bail Appl..No. 6348 of 2007()

CRIME NO. 28/2006 OF THE MOOZHIYAR POLICE STATION

PETITIONER/ACCUSED:

JAGATHAMMA, D/O. KARTHIAYANI,
AGED 52 YEARS, KURUPINETH HOUSE,
CHITTAR SEETHATHODU VILLAGE, KUMARAMPERUR,
VADAKKEKARA MURI, KOTTAMANPARA, TANNY TALUK,
PATHANAMTHITTA DISTRICT.

BY ADV. SRI.ABRAHAM SAMSON

RESPONDENTS: STATE:

THE STATE OF KERALA,
REPRESENTED BY THE SUB INSPECTOR OF POLICE,
MOOZHIYAR POLICE STATION - THROUGH THE
PUBLIC PROSECUTOR, HIGH COURT OF KEARLA,ERNAKULAM.
KOCHI-31.

BY PUBLIC PROSECUTOR ADV.SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 22/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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B.A.No. 6348 of 2007

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Dated this the 22nd day of October, 2007

ORDER

Application for anticipatory bail. The petitioner, a woman faces allegations under the Kerala Abkari Act. She was allegedly found to be in possession of 500 ml of arrack on 31.7.06. Investigation is complete. Final report has already been filed. Cognizance has been taken by the learned Magistrate. Committal proceedings are pending before the learned Magistrate. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The petitioner was not arrested by the Police because no woman police officials was available for arrest. The petitioner is willing to surrender before the learned Magistrate and seek bail. She apprehends that her application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. In these circumstances, appropriate directions may be issued under section 438 Cr.P.C prays the learned counsel for the petitioner.

3. The learned Public Prosecutor opposes the application. It is for the petitioner to appear before the learned Magistrate and seek regular bail in the ordinary course, submits the learned Public Prosecutor.

4. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is trite that powers under Section 438 Cr.P.C can be invoked in favour of a person who apprehends arrest in execution of a non bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded in the facts and circumstances of this case to conclude that any such reasons exist.

5. I find merit in the opposition by the learned Public Prosecutor. There are no features in this case suggesting the need for invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This is a fit case where the petitioner must appear before the learned Magistrate and seek regular bail in the ordinary and normal course. I have no reason to assume that the learned Magistrate would not consider the application for regular bail on merits, in accordance with law and expeditiously. Every court must do the same.

6. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself, unless there are compelling reasons.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE